



COMMONWEALTH of VIRGINIA

Office of the Governor

Robert F. McDonnell
Governor

June 11, 2012

TO THE HOUSE OF DELEGATES

Re: HOUSE BILL 1301

Today I have taken actions on House Bill 1301, the appropriation bill for the 2012-2014 biennium, so that the biennial budget bill will go into effect on July 1, bringing certainty to all citizens and stakeholders affected by it. I am sure that many members of the General Assembly would agree that the process for reaching conclusion on the budget was lengthy and difficult. The core fiscal objectives I outlined in the introduced budget last December have been accomplished, and much progress was made in funding for public education, higher education, economic development, health and human resources, as well as reform of the retirement system. The ability of all to compromise where necessary and work together toward these results is noted and appreciated.

The budget bill returned to me from the special session presents a sound financial plan to move the Commonwealth ahead. Therefore, my actions on this re-enrolled budget bill are very limited. Specifically, I have signed House Bill 1301, including one veto and one provision marked as unconstitutional. My reasons for these actions are further elaborated below.

Item 469.J.3. Payments for Special or Unanticipated Expenditures

The last phrase in this budget item unconstitutionally conditions the Governor's authority on distributing any funds from the Federal Action Contingency Trust ("FACT") fund by requiring prior approval by the FACT Fund Approval Commission ("Commission"). The Commission is composed of 10 members of the General Assembly and "is established as an advisory commission in the legislative branch." As such, I believe that any attempt to delegate legislative approval or veto power over distributions from the FACT fund to a subset of the General Assembly (i.e., the Commission) is unconstitutional.

In accordance with Article III, Section 1 of the Virginia Constitution, the legislative, executive and judicial departments shall be separate and distinct, "so that none exercise the

powers properly belonging to the others....” Clearly, the distribution and execution of appropriated monies from the FACT fund falls within the Executive Department and by instituting a Commission of 10 legislators to cast binding approval or veto votes violates the Division of Powers.

If the General Assembly is trying to manage and execute each distribution of monies from the FACT fund, which was never the purpose or intent of creating the fund, as separate and individual appropriations, the General Assembly may not do so by delegation. Pursuant to Article IV, Section 11 of the Virginia Constitution, the General Assembly can only pass a bill that makes any appropriation by the affirmative vote of a majority of all members elected to each house, not by the affirmative vote of only 10 members.

As stated, in *Commonwealth v. Dodson* 176 Va. 281, 296 (1940), “...if for any reason any item may be unconstitutional, it may be stricken out...” Based on these two sections of the Virginia Constitution as described above, I view this language in Item 469.J.3. as inherently unconstitutional and therefore, unenforceable. Nonetheless, it is my full intent to work very closely with the legislature and the Commission to fully evaluate any expenditures from this new FACT fund which I created in the introduced budget, so that we have a collaborative process for addressing challenges created by the necessary reduction in federal spending.

Part 4: General Provisions

§4.5-11 Assignment of General Fund for Nonrecurring Expenditures

It is an established principle of Virginia law that a statute should not be amended by means of a General Assembly amendment to the budget, yet it appears that in multiple locations throughout HB1301, the General Assembly has legislated through the budget.

The amendment made by the Conference Committee in Section 4-5.11 of the General Provisions of HB1301 (“Budget Section 4-5.11”) to prohibit surplus revenue funds from going to transportation and transportation maintenance that are reserved and deposited into the category of nonrecurring expenditures is directly at odds with legislation passed during the regular session. On March 10, 2012, the House and Senate passed House Bill 1248 and Senate Bill 639, to provide the flexibility to utilize these future surplus revenue funds for non-recurring expenditures including transportation, yet the Budget Conference Committee, and then by vote on April 18, 2012, the General Assembly, reversed its previous action.

As you know, the very first change to the Code of Virginia by way of Chapters 729 and 733, 2012 Acts of Assembly (HB1248/SB639) strikes the prohibition on using these surplus revenue funds for transportation and transportation maintenance. Section 4.5-11 of the General Provisions of HB1301 adds this prohibition back, by specifying a definition of “Nonrecurring expenditures.” Section 4.5-11 of the General Provision of HB1301 neither includes all of Chapters 729 and 733 nor all of §2.2-1514. Further, Section 4-5.11 of the General Provisions of HB1301 does not effectively qualify the amount or purpose of an appropriation because there is no appropriation for this section, rather there is only a reference to future revenue surpluses which do not now exist.

Under Article V, Section 6 of the Virginia Constitution, once a Governor has signed a bill, it becomes law. I signed House Bill 1248 and Senate Bill 639 into law on April 9, 2012. Therefore, finding §4.5-11 of the General Provisions of HB1301 as failing to effectively qualify the amount or purpose of an actual appropriation and finding this Section to be separate legislation which only has the purpose to override the previously enacted provisions of Chapters 729 and 733, 2012 Acts of Assembly, I hereby veto §4.5-11 of House Bill 1301. In short, my action simply makes the budget consistent with the Code of Virginia.

While the budget I sign today accomplishes great good for the people of Virginia, I am disappointed that several recommendations I made for cost cutting, increasing efficiency and government reform were not approved. Additionally, the legislature declined to adopt the prudent plan I introduced for significantly increasing transportation funding statewide, but I applaud the House for its support. I remain concerned about funding various expensive programs like COCA to expand administrative costs in schools, and am pleased that JLARC will evaluate the merits of this program. After 16 months in continuous session, I wish my friends in the legislature well, and thank them for their hard work.

Respectfully submitted,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert F. McDonnell